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23 *Attorneys for Plaintiffs*

24 IN THE UNITED STATES DISTRICT COURT
25 FOR THE CENTRAL DISTRICT OF CALIFORNIA
26 WESTERN DIVISION

27 **JENI PEARSONS and MICHAEL**
28 **STORC,**

19 Plaintiffs,

20 v.

21 **UNITED STATES OF AMERICA;**
22 **and Federal Bureau of Investigation**
23 **Special Agents LYNNE ZELLHART,**
24 **KATHRYN BAILEY DRESS,**
25 **BRENT JAMES, WALTER DIX,**
26 **RYAN HEATON, and LESLEY**
27 **BUCHAN, in their individual**
28 **capacities,**

29 Defendants.

30 Case No. 2:23-cv-07952-RGK-MAR

31 **DECLARATION OF JOSEPH GAY**
32 **IN SUPPORT OF MOTION FOR**
33 **EXTENSION OF TIME FOR**
34 **SERVICE**

35 *(Filed concurrently with Notice of
36 Motion for Extension of Time for
37 Service and Memorandum in Support,
38 and Proposed Order)*

39 Date: January 22, 2024

40 Time: 9:00 a.m.

41 Courtroom: 850

42 Judge: Hon. R. Gary Klausner

43 Complaint Filed: Sept. 22, 2023

44 Am. Complaint Filed: Dec. 19, 2023

1 I, Joseph Gay, declare:

2 1. I am an active member of the State Bar of New York and the District
3 of Columbia Bar, and I am an attorney at the Institute for Justice. I submit this
4 declaration in support of Plaintiffs' Motion for Extension of Time.

5 2. I am counsel for Plaintiffs in the above-captioned matter.

6 3. Plaintiffs filed their original complaint on September 22, 2023, after
7 the FBI took the contents of the safe-deposit box and failed to return \$2,000 in cash
8 stored inside. Plaintiffs brought claims against the United States as well as the
9 individual FBI agents responsible for the missing property.

10 4. Plaintiffs and their counsel, however, did not know which FBI agents
11 searched Plaintiffs' safe-deposit box, so those defendants were identified in the
12 original complaint as Doe defendants. Plaintiffs' counsel, however, understood that
13 the identities of the Doe defendants could be determined from the government's
14 records of its searches of the safe-deposit boxes.

15 5. On October 25, 2023, I emailed the Assistant United States Attorney
16 representing the United States in a related lawsuit (*Snitko v. United States*, No.
17 2:21-cv-04405-RGK-MAR (C.D. Cal.)), to request either a call to discuss this
18 lawsuit, or information about who we could speak to within the U.S. Attorney's
19 office about this case. After he informed us that he was not assigned to this case,
20 my colleague Robert Frommer emailed him on October 26 to confirm whether
21 there was someone else in the civil division we could speak to.

22 6. After receiving no response to Mr. Frommer's October 26 email, we
23 identified and emailed the head of the General Civil Section on November 2, 2023.
24 She identified the Assistant United States Attorneys assigned to this case, Jasmin
25 Yang and Yujin Chun.

26 7. I contacted Ms. Yang and Ms. Chun and we were able to schedule a
27 call to discuss identifying the Doe defendants on November 17, 2023. During the
28 call, Ms. Yang said the government would consider modifying the protective order

1 from the *Snitko* litigation, so that Plaintiffs could use the discovery materials
2 produced by the government in that case to research and identify the Doe
3 defendants. Due to Ms. Yang's planned travels and the upcoming holiday, she said
4 the government would provide its position on modifying the protective order the
5 week of November 27.

6 8. On November 28, Ms. Yang said that the government would agree to
7 modify the provisions of the *Snitko* protective order. The parties filed a stipulation
8 to that effect on December 1 (D.E. 39), which the Court approved on December 4
9 (D.E. 40) in an order that was entered on December 5.

10 9. I then began researching the discovery materials to identify the Doe
11 defendants. In addition to reviewing the records from the search of Plaintiffs'
12 boxes, I also reviewed a significant number of other discovery materials to verify
13 that the allegations accurately identified the defendants as special agents at the FBI.

14 10. On December 19, Plaintiffs filed their First Amended Complaint,
15 which substituted defendants Dress, James, Dix, Heaton, and Buchan in place of
16 the Doe defendants. Plaintiffs also submitted requests that summonses be issued
17 for each newly identified defendant.

18 11. On December 21, Plaintiffs' counsel's paralegal called the clerk's
19 office to again request that it issue a summons for each new defendant. The clerk's
20 office issued the summonses shortly after that.

21 12. As soon as counsel for Plaintiffs received the summons for each new
22 defendant, they immediately provided the summonses and First Amended
23 Complaint to our vendor for service of process with instructions to complete
24 personal service today.

25 13. Soon after that, Plaintiffs' process server attempted personal service at
26 the FBI's Los Angeles field office (where Defendant Zellhart was previously
27 served successfully), but was informed that no one was available at that office to
28 accept service. The process server was told to return on Friday, December 22,

1 2023, before noon. A copy of the process server's report is attached as Exhibit A.

2 14. Plaintiffs' counsel has instructed the process server to attempt service
3 again on Friday, December 21, before noon.

4
5 Executed this 21st day of December 2023

6 /s/ Joseph Gay
7 Joseph Gay

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